IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.503 OF 2000

Dr.Vishwanath Gopal Sawant, Aged 38 years, Occu: Service, Residing at 4/2/10, India Park, Near Vegetable Market, Chinchwad, Pune-411 033. ..Petitioner.

V/s.

Dr.Dilip Madarilal Kanoj, Adult, Residing at 53/2, 'Buniyad' Scheme No.10, Sector 21, Yamuna Nagar, Nigadi, Pune - 411 044. ..Respondent.

Mr.A.S. Khandeparkar for petitioner.

Mr.Ashok Bhatewara for respondent (Absent).

CORAM : R.V.MORE, J.

DATED : 22ND JUNE, 2007.

ORAL JUDGMENT

Heard Mr.Khandeparkar for the petitioner. None appears for the respondent.

2. The petitioner by filing this writ petition under Article 227 of the Constitution of India challenges the legality, validity and propriety of the order dated 12/8/1999 passed by the learned Civil Judge, J.D. Pimpri below Exhibit 31 in Contempt Petition No.22/95 whereby the petitioner's application for rejection of the Contempt Petition No.22/95 came to be rejected.

3. The facts giving rise to the present petition are as follows:-

The petitioner at the relevant time was working as Medical Officer with Pimpri-Chinchwad Municipal Corporation. He filed Civil Suit bearing No. 178/94 before the learned Civil Judge, J.D.Pimpri against the Pimpri-Chinchwad Municipal Corporation seeking declaration that the resolution passed by the Municipal Corporation dated 28/10/1994 sanctioning five post for the purpose of promotion was in excess of the quota fixed by the State Government. The petitioner also filed an application at Exhibit 5 in the abovesaid suit to restrain the Pimpri-Chinchwad Municipal Corporation from passing resolution in its General Body Meeting dated 19/11/1994 in respect of the promotion of the respondent and other four doctors to the post of the Senior Medical Officers as per the Law Committee Resolution dated 28/10/1994.

2. The respondent filed an application at Exhibit 17 in the above suit for impleading him as a party defendant. The trial Court disposed of the application at Exhibit 17 filed by the respondent and application at Exhibit 5 filed by the petitioner by its order dated 18/11/1994 thereby application Exhibit 5

was partly allowed and the Pimpri-Chinchwad Municipal Corporation was restrained from passing the resolution in its General Body Meeting dated 19/11/1994 in respect of promotion of above five medical Officers to the post of the Senior Medical Officers. The application at Exhibit 17 filed by the respondent for impleading him as a party defendant came to be rejected.

3. The respondent being aggrieved by the rejection of his application at Exhibit 17 filed Civil Revision Application No.39 of 1995 in this Hon'ble Court. The Civil Revision Application was finally heard and disposed of by the learned Single Judge by his order dated 5th September, 1995 thereby the Civil Revision Application came to be allowed and the petitioner was directed to implead the respondent as a party defendant to the suit by amending the plaint within a period of 4 weeks from the date of the order.

4. It is the case of the respondent that the trial Court received the Writ of the abovesaid order passed in Civil Revision Application No.39 of 1995 on 20/9/1995 and it was ordered to be kept in the file of Regular Civil Suit No.178/94. Since the petitioner did not carry out the amendment thereby impleading the respondent as party defendant within a period of 4 weeks from the date of the order namely 5/9/1995, the

respondent filed Contempt Petition bearing No.22/95 in the Court of the Civil Judge, J.D. Pimpri against the petitioner and other contemnors on the ground that they failed to obey and implement the aforesaid order of the High Court.

5. The petitioner in the abovesaid Contempt Petition filed an application at Exhibit 31 with a prayer that the Contempt Petition No.22/95 may be rejected. The contention of the petitioner was that since the respondent has alleged the Contempt of High Court order, the Contempt Petition is required to be filed before the High Court on its Appellate Side and the learned trial Judge has no jurisdiction to deal with the Contempt Petition. It was also contended that the petitioner has also preferred withdrawal pursis as he does not want to proceed with the suit now and on this ground also, it was requested that the Contempt Petition deserves to be rejected.

6. The respondent in his reply to the said application contended that the trial Court is not taking cognizance of the Contempt Petition and just conducting an enquiry and after enquiry, a reference of the Contempt will be made to the Hon’ble High Court. In these circumstances, the respondent prayed for rejection of the petitioner’s application.

7. The learned trial Judge namely Joint Civil Judge, J.D. Pimpri who disposed of this application by his order dated 12/8/1999 was pleased to reject the same. The petitioner being aggrieved preferred the aforesaid Writ Petition under Article 227. The same was admitted by this Court on 22/2/2002. An interim relief in terms of prayer clause (b) was granted and further proceedings of the Contempt Petition No.22/95 pending before the Civil Judge, J.D. Pimpri came to be stayed.

8. Mr.Khandeparkar, learned Counsel for the petitioner submitted that the Contempt Petition is not maintainable before the learned Civil Judge, J.D. Pimpri. The learned trial Court has no jurisdiction to deal with the Contempt Petition as presented by the respondent. He also submitted that perusal of the facts and circumstances of the case do not reveal any contempt either Civil or Criminal whatsoever and, therefore, in the interest of justice, the petitioner's application at Exhibit 31 should have been allowed and the Contempt Petition No.22/95 ought to have been rejected. Mr.Khandeparkar further pointed out that in fact the cause of action in the suit does not survive. The petitioner also filed a pursis for withdrawal of the suit as long back as on 9/9/1998. He also made a

statement at bar on instructions that the petitioner as well as respondent and others concerned have already been promoted to the post of Senior Medical Officer and nothing survives in the suit. In this view of the matter, he submits that the petition deserves to be allowed.

9. Having given anxious consideration to the documents on record along with the submissions of the learned counsel for the petitioner, I am of the considered view that the petition deserves to be allowed.

10. The respondent filed Contempt Petition No.22/95 making grievance that the petitioner has committed contempt of order passed by the High Court on 5th September, 1995 in Civil Revision Application No.39 of 1995. It is true that by the aforesaid order the petitioner was directed to implead the respondent as a party defendant to the suit within a period of 4 weeks. It is also true that within the period of 4 weeks, the petitioner failed to amend the title of the suit and implead the respondent as party defendant. In my opinion, on failure of the petitioner to implead the respondent as a party defendant, it was open for the respondent to move the Court under Order 39 Rule 11 of the Civil Procedure Code with a prayer for dismissal of

the suit filed by the petitioner. The respondent never filed such application under Order 39 Rule 11 of the C.P.C. but, however, filed a Contempt Petition No.22/95. In my considered view, failure of petitioner to carry out the amendment cannot be said to have resulted in obstruction in the administration of justice.

11. The contention of the petitioner before the trial Court was that the Contempt Petition is not maintainable in view of the provisions of Rule 18(B) of the Rules framed by the High Court under which jurisdiction is with the High Court and not with the trial Court. This contention was taken since the contempt was arising out of the proceedings filed on the Appellate Side of the High Court. In reply, the respondent contended that the Court is not taking cognizance but it is conducting an enquiry and after enquiry a report will be sent to the Hon'ble High Court. The learned trial Judge however, did not answer the issue regarding the jurisdiction in view of Rule 18(B) of the above Rules. The learned Judge considered the definition of the Criminal Contempt and came to the conclusion that failure of the petitioner in carrying amendment resulted in obstruction of Civil Suit bearing No.178/94 and, therefore, such obstruction is covered under section 2 (c) (3) of the Contempt of Court Act

and he is competent to enquire and make a reference to the Hon’ble High Court.

12. After giving anxious thoughts to the definition of the criminal contempt along with the provisions of section 15 of the Contempt of Courts Act which deals with the cognizance of the criminal contempt and the facts of the present case in particular, I am of the considered view that the respondent failed to prove that the petitioner has committed any criminal contempt.

13. Though the learned Single Judge of the High Court allowed the Civil Revision Application of the respondent and directed the petitioner to implead the respondent as a party defendant, in my opinion, failure to do so will not amount to criminal contempt. Such failure on the part of the petitioner may be for difference reasons, including want of knowledge. In any case, in the present case, I am satisfied that the failure of the petitioner to carry out amendment did not result in obstruction of administration of justice. As stated above, it was open for the respondent to apply under Order 39 Rule 11 of the C.P.C. and get the petitioner’s suit dismissed for defying the orders of the High Court. The respondents, from 1995 to 1998 i.e. from the date of the order passed by the High

Court till passing of the impugned order, have not preferred any application as stated above.

14. It is a matter of record that the petitioner filed a withdrawal pursis before the impugned order was passed. This withdrawal pursis was filed since the cause of action did not survive and everybody, including the petitioner, respondent and other Medical Officers were already promoted. In these facts and circumstances, in my view, the prosecution of the Contempt Petition No.22/95 pending before the learned Single Judge, J.D. Pimpri is academic. I have also held that no case for Criminal Contempt is made out by the respondent. In view of this, I pass the following order.

i. The impugned order dated 12/8/1999 passed by the learned Civil Judge, J.D. Pimpri below Exhibit 31 in Contempt Petition No.22/95 is quashed and set aside and the petitioner’s application at Exhibit 31 in Contempt Petition No.22/95 (Exhibit C to this Petition) is allowed and consequently, the Contempt Petition No.22/95 is rejected.

ii. Rule is made absolute in above terms with no order as to costs.

(R.V.MORE, J.)